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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

MERCHANDISING TECHNOLOGIES,
INC., an Oregon corporation,

Plaintiff,

vs.

TELEFONIX, INC., an Illinois corporation,
and VANGUARD PRODUCTS GROUP, a
Florida corporation,

Defendants.

Case No. 3:05-cv-1195

THIRD AMENDED COMPLAINT
(35 U.S.C. § 292)

JURY TRIAL DEMANDED

Plaintiff MERCHANDISING TECHNOLOGIES, INC. (“MTI”), for its complaint
against defendants TELEFONIX, INC. (“Telefonix”) and VANGUARD PRODUCTS GROUP
(“Vanguard”), alleges as follows:

JURISDICTION AND VENUE

1. This is an action for false marking. Jurisdiction is proper pursuant to 28 U.S.C. §§ 1331 and 1338. Venue is proper in this judicial district under 28 U.S.C. §§ 1391. This Court has personal jurisdiction over the defendants because they are doing business in this district. The acts and practices constituting the violations alleged in this complaint occurred within this judicial district and elsewhere.

PARTIES

2. Plaintiff MTI is an Oregon corporation having its principal place of business in Hillsboro, Oregon.

3. Defendant Telefonix is an Illinois corporation having its principal place of business in Waukegan, Illinois.

4. Defendant Vanguard is a Florida corporation having its principal place of business in Tampa, Florida.

5. Upon information and belief, Telefonix and Vanguard are related companies. At all relevant times Paul Burke was and now is a principal of both Telefonix and, upon information and belief, Vanguard.

6. MTI builds interactive retail displays for hand-held consumer electronic devices, such as cell phones and digital cameras, and sells them in interstate commerce. These displays are commonly seen in large electronics stores, such as BestBuy and Fry's Home Electronics. MTI is one of just a handful of suppliers to the US market for these displays. To the best of MTI's knowledge, there are approximately four other vendors who sell to this market, one of which is Vanguard.

7. Each interactive consumer electronics display unit typically includes a mounted or freestanding base, with an electric cable extending from it that supplies power and antitheft security to an electronic product fastened to the end of it. Because the cables move freely and

carry power, the customer can easily handle and test the camera, cell phone, or other electronic device attached to each cable. A security alarm is triggered if the product is removed from the cable. For the purpose of this pleading, the retracting cable and other components that fasten to the hand-held electronic device will be referred to as a “Unibase” system.

6. Each of the cables on an MTI display is attached to a spring-loaded reel mechanism that allows it to play out cable when a customer lifts the product from the base, then causes the cable, or tether, as it is sometimes called, to retract to the base when the product is returned to the display. These tether and reel mechanisms are commonly called “retractors.”

7. Telefonix manufactures retractors. Beginning in 2000 MTI purchased retractors directly from Telefonix, for use in its Unibase systems.

8. Shortly thereafter, Telefonix informed MTI that a new, related company, Vanguard, would now be the exclusive distributor for Telefonix products, and that MTI would need to buy its Telefonix retractors from Vanguard.

9. MTI immediately began purchasing its Telefonix retractors from Vanguard, in accordance with Telefonix’s instructions.

10. From approximately early 2000 through late February 2005, MTI purchased retractors from Vanguard.

11. By a patent application filed in 1998, Telefonix sought and obtained United States Patent No. 6,386,906 (“the ’906 Patent”) for one design of a Unibase system. The ’906 Patent describes a design for swapping different electronic devices to the end of the cable having a single connecting interface (a traditional pin and socket connector).

12. The ’906 Patent issued on May 14, 2002.

13. The ’906 Patent covers a Unibase system that has a limited capacity to swap different types or models of hand-held electronic devices without electrical reconfiguration. It does not cover any retractor.

14. Telefonix/Vanguard has been using a mark (the number "U.S. Patent No. 6,386,906" or "the '906 patent number") importing that an object (the Telefonix/Vanguard retractor) is patented.

15. The '906 patent number was affixed to the Telefonix/Vanguard retractor which is an article ("unpatented retractor") that is not covered by U.S. Patent No. 6,386,906.

16. Telefonix/Vanguard sold unpatented retractors to MTI, affixed with the '906 patent number, during the time period approximating the years 2000 to 2005.

17. Telefonix/Vanguard sold unpatented retractors, affixed with the '906 patent number, to MTI for use by MTI as a component part of MTI's "Unibase" system.

18. MTI used Telefonix/Vanguard's unpatented retractors, affixed with the '906 patent number, by incorporating these retractors in MTI's "Unibase" system. These MTI "Unibase" systems were offered for sale, sold, and distributed to the public in the United States.

19. MTI's "Unibase" system, with the unpatented retractor, is not covered by the '906 patent.

20. Telefonix/Vanguard intended to deceive the public by indicating that unpatented retractors sold to MTI and others were patented when, in fact, they were not.

21. Telefonix/Vanguard lacked a reasonable belief that the unpatented retractors were properly marked.

FIRST CLAIM FOR RELIEF

(FALSE MARKING)

22. MTI refers to and incorporates paragraphs 1-21 as if set forth in full.

23. Telefonix/Vanguard violated 35 U.S.C. §292 by falsely marking unpatented retractors sold to MTI and other purchasers with U.S. Patent No. 6,386,906. Unpatented retractors were marked with the '906 patent number for the purpose of deceiving the public.

24. MTI is entitled to judgment against Telefonix and Vanguard, jointly and severally, for their false marking in an amount to be proven at trial, based upon an award of \$500 for each such offense.

WHEREFORE, MTI prays for judgment against Telefonix/Vanguard, jointly and severally, as follows:

1. On its FIRST CLAIM FOR RELIEF, for an order fining Telefonix and Vanguard \$500, jointly and severally, for each and every unpatented product falsely marked with a patent number, with one half of the cumulative penalty to be paid to MTI and the other half to be paid to the United States pursuant to 35 U.S.C. §292;

2. For such other and further relief as the Court deems just and proper.

DATED February 23, 2007.

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CERTIFICATE OF SERVICE

I hereby certify that I served by electronic mail the foregoing:

1. THIRD AMENDED COMPLAINT

with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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DATED this 23rd day of February, 2007.

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